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OAKRIDGE, LLC, J&K VALLEY FAIR, LLC, J  
& K ONTARIO, LLC, J&K PC TRUCKS, LLC,  
HLK MILPITAS, LLC, and GK CERRITOS, LLC

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SHAKEY'S PIZZA ASIA VENTURES,  
INC, a Philippines corporation,

Plaintiff,

vs.

PCJV USA, LLC, a Delaware limited  
liability company; PCI TRADING , LLC, a  
Delaware limited liability company; GUY  
KOREN, an individual; POTATO CORNER  
LA GROUP, LLC, a California limited  
liability company; NKM CAPITAL GROUP,  
LLC, a California limited liability company;  
J & K AMERICANA, LLC, a California  
limited liability company; J&K  
LAKEWOOD, LLC, a California limited  
liability company; J&K VALLEY FAIR,  
LLC, a California limited liability company;  
J & K ONTARIO, LLC, a California limited  
liability company; HLK MILPITAS, LLC, a  
California, limited liability company; GK  
CERRITOS, LLC, a California, limited  
liability company; J&K PC TRUCKS, LLC,  
a California limited liability company; and,  
GK CAPITAL GROUP, LLC, a California

Case No. 2:24-CV-04546-SB(AGRx)

*Hon. Stanley Blumenfeld, Jr.*

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF DEFENDANT PCJV  
USA, LLC'S MOTION FOR:**

- 1. SANCTIONS AGAINST  
PLAINTIFF SHAKEY'S  
PIZZA ASIA VENTURES,  
INC. UNDER FRCP RULE  
37(B)(2)(A); AND**
- 2. PAYMENT OF EXPENSES  
AGAINST PLAINTIFF AND  
ITS COUNSEL OR RECORD  
UNDER FRCP RULE  
37(B)(2)(C)**

**FOR FAILURE TO COMPLY  
WITH THE MAGISTRATE  
JUDGE'S COURT ORDER  
DATED MARCH 12, 2025 (DKT.  
NO. 128)**

1	limited liability company and DOES 1 through 100, inclusive,	Date: May 22, 2025
2	Defendants.	Time: 1:30 p.m.
3		Location: Zoom Video Conference
4	PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a 5 Delaware limited liability company; POTATO CORNER LA GROUP LLC, a 6 California limited liability company; GK CAPITAL GROUP, LLC, a California 7 limited liability company; NKM CAPITAL GROUP LLC, a California limited liability 8 company; and GUY KOREN, an individual,	Complaint Filed: May 31, 2024
9	Counter-Claimants,	Trial Date: August 4, 2025
10	v.	
11	SHAKEY'S PIZZA ASIA VENTURES, INC, a Philippines corporation,	
12	Counter Defendant.	
13		
14	PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a 15 Delaware limited liability company; POTATO CORNER LA GROUP LLC, a 16 California limited liability company; GK CAPITAL GROUP, LLC, a California 17 limited liability company; NKM CAPITAL GROUP LLC, a California limited liability 18 company; and GUY KOREN, an individual,	
19	Third Party Plaintiffs,	
20	v.	
21	PC INTERNATIONAL PTE LTD., a 22 Singapore business entity; SPAVI INTERNATIONAL USA, INC., a California 23 corporation; CINCO CORPORATION, a Philippines corporation; and ROES 1 through 24 10, inclusive,	
25	Third Party Defendants.	
26		
27		
28		

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

PCJV USA, LLC (“PCJV” or “Defendant”) is the first continuous user of “Potato Corner” USA trademarks and the agreed-upon vehicle through which the Potato Corner brand expanded into the United States. PCJV is now ultimately owned by Guy Koren (“Koren”) via a settlement with the original trademark registrant Cinco Corporation (“Cinco”) and parties affiliated with Cinco. Before that, PCJV’s owners comprised two sets of partners under a joint venture agreement—Koren’s domestic “LA Group” and Cinco’s “Cinco Group” in the Philippines. Shakey Pizza Asia Ventures, Inc. (“SPAVI” or “Plaintiff”) claims to have purchased global trademark rights from Cinco out from underneath PCJV’s common law and PCJV’s domestic joint venture parties’ contractual rights, including consent rights prohibiting such a transaction.<sup>1</sup>

PCJV seeks relief against SPAVI, which has not produced a single document or provided any meaningful discovery despite this case being a year old and despite a March 12 Order (Dkt. No. 128), which PCJV painstakingly obtained. On that date, the Court ordered SPAVI to: (1) file a protective order by March 14; (2) serve an interrogatory response by March 21; and (3) commence a rolling production of documents (with certain scope limitations and understanding of good faith efforts would be made to confer thereafter over custodians and search terms) the week of March 24 (including documents SPAVI represented it had already gathered and agreed to produce) with the production to be completed by April 11. The Court set an April 4 status conference to resolve any issues over search terms and custodians after PCJV had an opportunity to review the initial production.

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<sup>1</sup> SPAVI does not own any trademark rights to the “Shakey’s Pizza” brand or marks in the United States. It is a common example of how trademark rights are territorial and predicated on first continuous use or contractual rights, which sometimes results in separate ownership of a trademark in different countries.

1 SPAVI violated every single element of this Order. SPAVI did not file a  
2 protective order by March 14, serve an interrogatory response by March 21, or  
3 begin a rolling production the week of March 24, or the next week, or the week  
4 thereafter (or at all). SPAVI thwarted the purpose of the April 4 hearing because it  
5 had done nothing to comply with the March 12 Order except belatedly file a  
6 protective order on March 31 (after deleting an immaterial provision from the  
7 already approved-for-filing document) and belatedly serve an interrogatory response  
8 on April 9. And then, although belatedly representing at the April 4 hearing that it  
9 was prepared to produce documents, SPAVI still refused to do so as ordered by  
10 April 11.<sup>2</sup> As of today, April 14, SPAVI still has not produced anything.<sup>3</sup>

11 PCJV seeks remedies for the unfair prejudice caused by Plaintiff's refusal to  
12 comply with its discovery obligations and violations of the Magistrate Judge's  
13 March 12, 2025 Order. The purpose of discovery is to elicit the truth by requiring  
14 parties to produce documents and respond to questions relevant to the case-in-chief  
15 and defenses thereto. A party's case-in-chief cannot be believed, let alone fairly  
16 evaluated for trial or settlement, when the party suppresses directly relevant  
17 evidence and violates discovery orders.

18 There is and was a direct nexus between the requested discovery and  
19 Plaintiff's case-in-chief. Defendant propounded discovery bearing on Plaintiff's  
20 ultimate burden on its trademark infringement claims to prove that it has superior  
21

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22  
23 <sup>2</sup> It is no justification that Defendants, who are subject to a preliminary injunction  
24 and complied with court deadlines, refuse to prejudice themselves by reopening  
25 deadlines and continuing the trial. The District Court's standing order is clear that  
26 trials are not continued absent diligence and a timely request. Plaintiff rejected and  
27 refused in November, December, January, and early February to meet and confer on  
28 the case management order before deadlines expired, and have lacked diligence in  
discovery before making an untimely request. Malynn Decl. ¶¶ 20-21, Ex. 14.

<sup>3</sup> On Friday night, April 11, Plaintiff made a meaningless "proposal" to allow  
attorneys from Blank Rome to review only the asset purchase agreement in a  
"monitored" conference room at Plaintiff's counsel's office without any electronic  
equipment, notes, phones, writing pads, etc. Malynn Decl. ¶ 22, Ex. 15.

1 rights to use and control the U.S. Potato Corner trademarks. Defendant prevails on  
2 Plaintiff's trademark claims in one of three ways:

3 1. *Ownership*: By Plaintiff failing to carry its burden of proving that it  
4 actually acquired the U.S. trademark rights at issue after Defendant rebuts the  
5 presumption of ownership afforded an assignment of U.S. registrations in the  
6 middle of litigation where the assignor (Cinco) and any third party acting in concert  
7 or participation (including SPAVI) were enjoined from, *inter alia*, acting on threats  
8 to terminate the trademark rights of the U.S. franchisor (PCJV) then jointly owned  
9 by, *inter alia*, Cinco and Koren, and interfering with U.S. franchisor's use and  
10 control of the U.S. trademarks and communicating with U.S. franchisees any  
11 alleged superior right to use or control the U.S. trademarks;

12 2. *Written long-term license rights*: By Plaintiff failing to carry its burden  
13 of proving that it acquired ownership of the U.S. trademarks free and clear of long-  
14 term trademark rights supporting the state-court injunction and evidenced by written  
15 agreements signed by PCJV and PCJV's foreign and domestic joint venture partners  
16 years before any dispute arose between Cinco and Koren;<sup>4</sup> and

17 3. *Defenses against trademark enforcement*: By PCJV proving defenses  
18 such as (a) assignment in gross (where SPAVI's alleged ownership of the U.S.  
19 marks was separated from PCJV's control of the marks), (b) naked license (where  
20 SPAVI allegedly acquired rights as licensor when PCJV had control of the marks  
21 and SPAVI was enjoined from interfering with PCJV's control of the marks), and  
22

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23 <sup>4</sup> After Cinco agreed to joint venture with Koren to create a U.S. franchise system  
24 and U.S. franchisor, PCJV's joint venture partners bound Cinco to multiple written  
25 agreements as part of one transaction (the "Written Agreements"), including a joint  
26 venture agreement ("JVA") and first amendment thereto ("AJVA"), PCJV's  
27 operating agreement ("Operating Agreement"), and a non-royalty bearing master  
28 license agreement ("MLA") with a 20-year term and three 10-year options that  
Cinco's counsel DLA Piper drafted, that Cinco approved as documented in board  
minutes, that PCJV operated under in sub-licensing the U.S. marks, and that was  
referenced for 15 years in Franchise Disclose Documents initially drafted by  
Cinco's counsel DLA Piper and approved by Cinco as PCJV's majority owner.



1 (c) unclean hands (where SPAVI allegedly acquired rights by inducing Cinco to  
2 breach contracts prohibiting a transfer of rights without Koren's consent).<sup>5</sup>

3 In support of each of the foregoing, PCJV's RFP Nos. 1 to 21 sought the  
4 transactional related documents giving rise and meaning to (so as to cross-examine)  
5 the assignment between PCJV's joint venture partner Cinco and SPAVI that  
6 occurred in the middle of litigation where an injunction prohibited interference with  
7 PCJV's use and control of the U.S. trademarks to, *inter alia*, confirm or support the  
8 following facts before the discovery cut-off:

- 9 1. That SPAVI did not acquire any ownership interests in PCJV; thus,  
10 Cinco still co-owned PCJV's pre-existing rights as the first continuous  
11 user of the U.S. marks and vehicle through which Potato Corner  
12 trademark rights expanded into the United States;<sup>6</sup>
- 13 2. That SPAVI did not acquire, as Cinco had no ability to sell, rights  
14 Cinco vested in PCJV and co-owned by PCJV's joint venture partners,  
15 including the right of PCJV to control the use of the U.S. trademarks  
16

---

17 <sup>5</sup> The JVA/AJVA and Operating Agreement prohibited Cinco from transferring any  
18 U.S. trademark rights enjoyed by PCJV without Koren's written consent until Cinco  
19 agreed to the MLA, which is the only Written Agreement that authorized Cinco to  
20 transfer U.S. trademark rights to a third-party, such as SPAVI. During the state-  
21 court litigation, SPAVI represented to PCJV and Koren in writing that its  
22 international transaction with Cinco did not violate the Written Agreements before  
23 Koren settled the state-court litigation and promised to pay Cinco money and to  
24 release Cinco from liability for (a) all of Cinco's "Interests" in PCJV as a joint  
25 venture partner, (b) all of Cinco's rights "attached" to those Interests, including any  
26 and all rights as a licensor, (c) representations/warranties that PCJV did not require  
27 any new "license" from any third party, and (d) a broad indemnity obligation if  
28 PCJV and Koren were sued by SPAVI trying to revoke PCJV's long-term trademark  
rights under the Written Agreements and now settlement. Three days after the  
settlement, SPAVI blindsided PCJV and Koren with the federal lawsuit claiming  
that it was no longer bound by the state-court's injunction and interpretation of the  
Written Agreements, that the MLA's 20-year term and three 10-year options were  
not enforceable, that the AJVA and Operating Agreement did not prohibit Cinco  
from transferring the U.S. marks to the SPAVI, and that SPAVI as assignee/licensor  
did not step into Cinco's shoes and owe contractual and fiduciary obligations to  
PCJV and Koren.

<sup>6</sup> Under the Written Agreements, Cinco had no right to control PCJV's use of the  
U.S. trademarks (other than as an owner of PCJV or a licensor under the MLA).



1 under the Written Agreements unless the MLA was enforceable—  
2 Koren's consideration under the Written Agreements;

- 3 3. That SPAVI did not acquire any right to terminate PCJV's rights to  
4 use of the U.S. trademarks as any such sale of U.S. trademark rights by  
5 Cinco would have breached the Written Agreements unless SPAVI  
6 acquired U.S. trademark rights pursuant to the written authorization in  
7 the MLA (which SPAVI has denied);
- 8 4. That SPAVI knowingly acquired U.S. registrations and whatever  
9 interests defined in the transaction documents giving rise to and  
10 informing the assignment covering the U.S. trademarks used and  
11 controlled by PCJV and the Potato Corner USA franchise system  
12 subject to any and all prior common law and contractual rights of  
13 PCJV and PCJV's joint venture partners;
- 14 5. That in acquiring Cinco's international Potato Corner trademark  
15 portfolio, SPAVI did not pay adequate consideration to Cinco for U.S.  
16 trademark rights (rather, standing to attempt to enforce U.S.  
17 registrations was merely included in the transaction);
- 18 6. That SPAVI was fully aware of the risk and expense of litigation over  
19 whether PCJV and PCJV's domestic joint venture partners had  
20 superior rights to use and control the U.S. trademarks for at least well  
21 over 20 years pursuant to the terms of Written Agreements, which  
22 formed the basis of the state court's injunction;
- 23 7. That the consideration SPAVI paid to Cinco for the international  
24 Potato Corner trademark portfolio reflected the risk and expense of  
25 litigation over whether PCJV or PCJV's domestic joint venture  
26 partners had superior rights to use or control the U.S. trademarks for at  
27 least well over 20 years pursuant to the terms of Written Agreements,  
28 which formed the basis of the state court's injunction;

- 1           8. That SPAVI paid Cinco less consideration for the assignment covering  
2           the U.S. trademarks used by PCJV and the Potato Corner USA  
3           franchise system than it would have had to pay to both PCJV's foreign  
4           and domestic joint venture partners for U.S. trademark rights;
- 5           9. That SPAVI had full knowledge of PCJV's franchise agreements with  
6           third-party U.S. franchisees, including that those agreements were (a)  
7           for the benefit of PCJV and both its foreign and domestic joint venture  
8           partners, and (b) approved by PCJV's Board, which included both the  
9           foreign and domestic joint venture partners of PCJV; and
- 10          10. That SPAVI had full knowledge that (a) Koren's rights as PCJV's  
11          President and controlling owner of the LA Group to operate PCJV and  
12          control the U.S. marks, as found by the state court in response to  
13          Cinco's claim that the MLA was unenforceable, were protected by the  
14          AJVA and Operating Agreement, and (b) Cinco would be in breach of  
15          the Written Agreements as enforced by the state court if it sold U.S.  
16          trademark rights to a third party without Koren's consent unless Cinco  
17          agreed to the MLA authorizing such a transaction.

18           Defendants prevail on Plaintiff's claims for misappropriation of trade secrets  
19   if Plaintiff cannot prove the following elements of its case-in-chief, which form the  
20   subject matter of PCJV's RFP Nos. 22 to 27 and Interrogatory No. 1:

- 21          1. That the contents and labeling of the seasoning packages are trade  
22          secrets and not publicly available and purchased by third parties;
- 23          2. That reasonable steps since 2009 were taken to maintain the alleged  
24          secrecy of the contents and labeling of the seasoning packages;
- 25          3. That SPAVI owns or possesses the alleged trade secrets and provided  
26          them to Defendants, who allegedly misappropriated them through  
27          "reverse engineering" (a nonsensical claim); and  
28

1           4. That SPAVI has been damaged as a result of competition mimicking  
2           the flavors of the seasonings it uses to flavor french fries.

3           Notably, the Written Agreements were the subject of six years of litigation in  
4           state court that Cinco settled with Koren. Under the settlement, Koren acquired *all*  
5           of Cinco's rights under the Written Agreements. Tellingly, Plaintiff did not timely  
6           serve *any* discovery prior to the cut-off. Why? Plaintiff, who is represented by the  
7           same counsel as Cinco in the state-court litigation, had access to *all* the discovery in  
8           the state-court action. Plaintiff's witnesses have declared that they did due diligence  
9           on the U.S. litigation before acquiring Cinco's trademark portfolio. As Cinco's  
10          effective successor-in-interest and being represented by the same counsel and  
11          having access to all prior discovery, Plaintiff obviously felt it did not need discovery  
12          in this action and it was more beneficial if there was no discovery on its trademark  
13          and trade secrets claims, which it has effectively achieved.

14          In contrast, it was imperative for a fair trial that prior to the discovery cut-off  
15          Defendants obtain requested discovery relevant to the issues the parties did not  
16          undertake discovery upon in state court, including documents that Plaintiff disclosed  
17          it intended to use at trial. Although SPAVI possesses these documents, SPAVI has  
18          refused to produce any correspondence, due diligence, draft/final transaction  
19          documents, or any other documents that led or give meaning to the trademark  
20          assignment or that supports its allegations of trade-secret misappropriation or that  
21          demonstrate SPAVI's interference with PCJV's contractual relationships with its  
22          franchisees and vendors. Not even any of the following broadly described  
23          documents in SPAVI's initial disclosures requested by Defendant's RFP Nos. 1 to  
24          27 were produced before the discovery cut-off: "Documents relating to intellectual  
25          property comprising the Potato Corner brand,... including documents showing  
26          SPAVI's ownership of the Potato Corner brand..., documents evidencing SPAVI's  
27          trade secrets included within the Potato Corner Intellectual Property, protectability  
28

1 of any of the Potato Corner Intellectual Property (including the maintenance of  
2 secrecy of any confidential, proprietary, and/or trade secret information);....”

3 Plaintiff has self-created the highly prejudicial and unfair situation that it has  
4 all the documents it needs for trial before the discovery cut-off but Defendants only  
5 have discovery from the prior action and none of the documents relevant to  
6 SPAVI’s claims—including the core documents responsive to PCJV’s RFP Nos. 1  
7 to 27 lying at the heart of this case and within Plaintiff’s initial disclosures—or  
8 support SPAVI’s tortious interference. Because SPAVI intentionally withheld these  
9 documents and knowingly failed to fulfill its discovery obligations prior to the  
10 discovery cut-off, including in violation of the Magistrate Judge’s March 12 Order,  
11 Defendants have been unfairly prejudiced, especially since the discovery cut-off has  
12 passed and they are under a preliminary injunction. Sanctions under Rule 37(b) are  
13 just, necessary and appropriate.

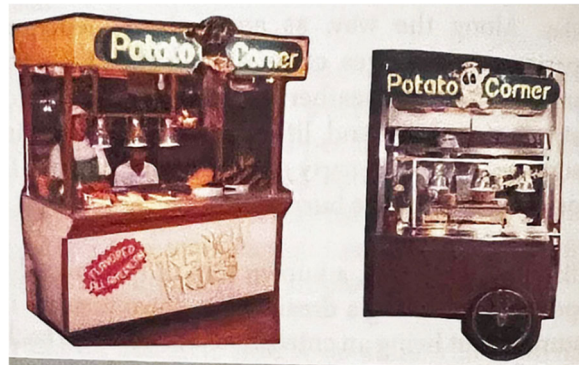
## 14 **II. BACKGROUND**

15 This case involves the franchise business Potato Corner USA, which created,  
16 developed, operated and sold branded kiosk-style restaurant franchise outlets across  
17 the United States selling flavored french fries and other food and beverage items.  
18 The brand “Potato Corner” and related trademarks, including the word mark “Potato  
19 Corner” (USPTO Reg. No. 3760041), the tagline “World’s Best Flavored French  
20 Fries” (USPTO Reg. No. 3760041), and the logo mark (USPTO Reg. No. 3760041)  
21 (collectively, the “Marks”), symbolize the consumer goodwill PCJV’s U.S. Potato  
22 Corner franchise system created, grew and maintained for 15 years.

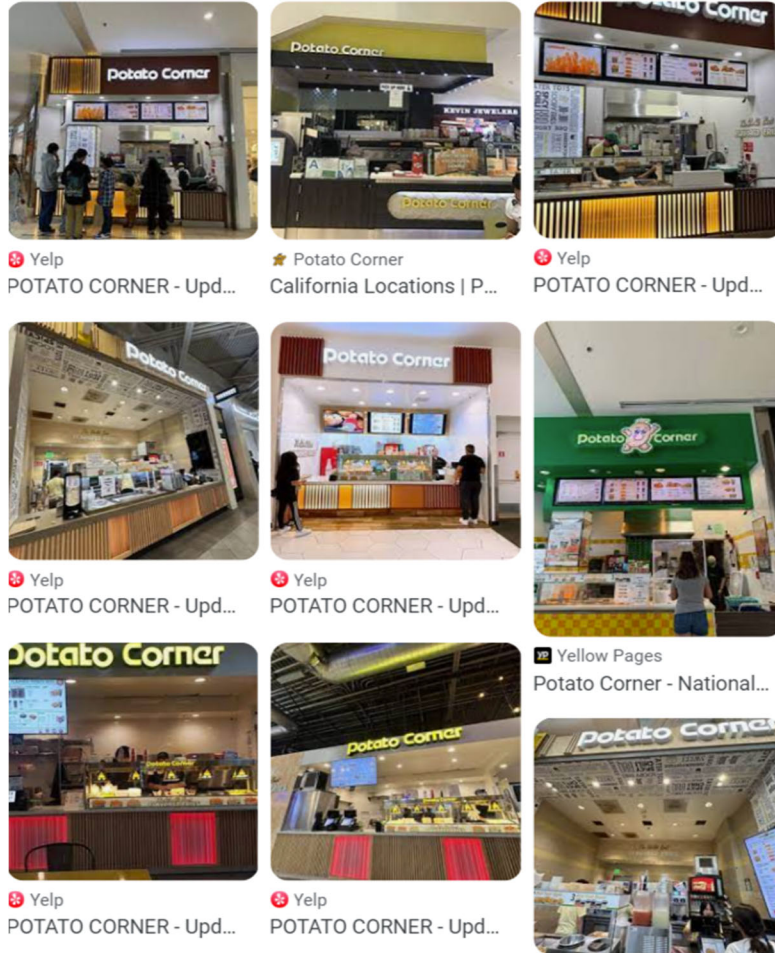
23 Based on Cinco’s verified pleading in the prior state-court action over control  
24 of the U.S. franchisor PCJV LASC Case No. BC701075, there was no dispute how  
25 the Potato Corner brand expanded into the United States. Cinco agreed to joint  
26 venture with Koren to create a U.S. franchise system and in exchange for Koren’s  
27 agreement to create, develop, operate and grow the U.S. franchise system, Cinco  
28 literally contributed long-term rights in the brand to the joint venture. Pursuant to

1 the Written Agreements, PCJV's Board had 100% control of the U.S. trademarks  
2 until there was an enforceable written master license agreement.

3 Originally, the brand was created in the Philippines to promote handcarts or  
4 "hot-dog" style stands selling french fries seasoned with flavors purchased from and  
5 publicly sold by third-party Ferna Corporation ("Ferna") (shown below):



6  
7  
8  
9  
10  
11  
12 After securing written long-term trademark rights, Koren's led LA Group  
13 designed and managed the kiosk-style restaurant franchise outlets (shown below),  
14 including the entire new look for the Potato Corner brand, word mark (USPTO Reg.  
15 No. 3760041), menu items, as to which PCJV had 100% control.



17 In response to dueling motions for a preliminary injunction, including Cinco's  
18 assertion that the MLA was unenforceable and that it might try to unilaterally  
19 terminate PCJV's rights to use the U.S. trademarks if it was not granted control of  
20 PCJV, the state court enforced the Written Agreements and enjoined Cinco and any  
21 party acting in concert or participation with Cinco from (a) interfering with Koren's  
22 delegated rights as PCJV's President, including the right to control the Potato  
23 Corner marks in the United States and (b) communicating with U.S. franchisees that  
24 Cinco had superior rights to use or control the U.S. trademarks. In 2021, the state  
25 court commandeered the parties to mediation, through which the case ultimately  
26 settled resulting in dismissals with prejudice and Defendants' defense of *res*  
27 *judicata* and collateral estoppel as informed by the settlement agreement.

28 In the middle of settlement discussions, SPAVI announced its acquisition of



1 Cinco's international trademark portfolio, to which Defendants objected as violative  
2 of the Written Agreements and a nonevent relative to Defendants' prior common  
3 law and contractual rights securing their use of the U.S. trademarks. To avoid  
4 escalating the state-court action and thwarting any opportunity to settle the case,  
5 SPAVI wrote a letter representing that its announced international transaction did  
6 not breach the Written Agreements and it would be bound by a settlement between  
7 Defendants and Cinco. SPAVI signed a three-way tolling agreement enabling three-  
8 way discussions and individual discussions with Defendants if Cinco separately  
9 settled, so that the parties could potentially reach a business resolution.

10 After SPAVI delayed settlement for over a year and Cinco and Defendants  
11 settled the state court litigation, SPAVI blindsided Defendants with the federal  
12 action three days after the settlement alleging it was no longer bound by the state  
13 court's injunction and interpretation of the Written Agreements as Cinco's  
14 successor-in-interest. The District Court did not bar SPAVI's claims and interpreted  
15 the Written Agreements differently than the state court, including ruling that Cinco  
16 was not one of PCJV's joint venture partners and the LA Group's consideration did  
17 not include written long-term trademark rights. The Ninth Circuit has set oral  
18 argument on the preliminary injunction appeal for May 15.

19 In accordance with the District Court's case management order, Defendants  
20 timely served discovery on December 6, 2025, after the preliminary injunction  
21 skirmishes. To evaluate and cross examine Plaintiff's trademark and trade secret  
22 claims, PCJV sought the best evidence of Plaintiff's alleged trademark and trade  
23 secret rights, and propounded the following RFP and interrogatory:

- 24 • No. 1: All documents and communications referring to or evidencing  
25 the agreements related to the sale of Potato Corner assets;
- 26 • No. 2: All documents and communications relating to the business  
27 opportunity of acquiring the Potato Corner assets;
- 28 • No. 3: All documents and communications relating to the valuation of

1 the business opportunity of acquiring the Potato Corner assets;

- 2 • No. 4: All documents and communications relating to the negotiations  
3 of the sale of the Potato Corner assets;
- 4 • No. 5: All documents and communications relating to the discount, if  
5 any, SPAVI requested or received due to any risk of litigation;
- 6 • No. 6: All documents and communications relating to the due diligence  
7 conducted in connection with the acquisition of Potato Corner assets;
- 8 • No. 7: All documents and communications relating to any risk  
9 assessment of acquiring Potato Corner assets, including any risk of  
10 litigation in the United States;
- 11 • No. 8 & 19: All regulatory filings in connection with the acquisition of  
12 Potato Corner assets and all documents relating to compliance with any  
13 legal or regulatory requirements;
- 14 • No. 9: All meeting minutes, resolutions or other documents and  
15 communications reflecting decisions SPAVI's board of directors or any  
16 committee made regarding the acquisition of Potato Corner assets,  
17 including documents relating to (a) how the business opportunity came  
18 to the board or any committee thereof, (b) initial or subsequent asset or  
19 business valuations related to the business opportunity, (c) any updates,  
20 progress reports, delays or setbacks in or during negotiations to acquire  
21 Potato Corner assets, (d) any discounts or offers of value related to any  
22 actual, perceived or possible litigation risk connected with any Potato  
23 Corner assets, and (e) due diligence requested by or presented to the  
24 board or any committed thereof;
- 25 • No. 10 & 18: All external communications with any other party  
26 regarding the acquisition of the Potato Corner assets;
- 27 • Nos. 11 & 17: All internal communications regarding the acquisition of  
28 the Potato Corner assets;

- No. 12: All financial documents related to the acquisition of the Potato Corner assets;
- No. 13: All documents and communications related to the transfer of intellectual property to SPAVI;
- No. 14: All press releases, public announcements and other public communications regarding the acquisition of the Potato Corner assets;
- No. 15: All internal reports, analyses, and presentations prepared by or for SPAVI regarding the acquisition of the Potato Corner assets;
- No. 16: All legal opinions in connection with the acquisition of the Potato Corner assets, including on regulatory compliance, intellectual property and contractual obligations;
- No. 20: All audit reports related to the acquisition of the Potato Corner assets;
- No. 21: All documents and communications related to the U.S. franchisees, including with the U.S. franchisees;
- No. 22: All documents and communications related to SPAVI's allegation that specific ingredients and proportions of ingredients, as well as recipes for preparation, are (a) deeply guarded trade secrets and (b) SPAVI's property;
- No. 23: All documents and communications relating to the allegation that Defendants were developing a competing business;
- No. 24: All documents and communications relating to the allegation that SPAVI provided confidential and proprietary information to Defendants, including the recipes, ingredients, and ingredient allocations for its proprietary flavorings, the identities of its suppliers, and other know-how procedures, and processes used and employed at Potato Corner outlets;

- No. 25: All documents and communications related to the allegation that as a proximate cause of Defendants' alleged misappropriation of trade secrets SPAVI had suffered millions of dollars in damages;
- No. 26 & 27: All documents identifying and evidencing SPAVI's alleged trade secrets; and
- Interrogatory No. 1: Identify the alleged trade secrets with reasonable particularity.

*See* Malynn Decl., Ex. 5.

After Plaintiff demanded and received an extension, Plaintiff served a response to Interrogatory No. 1 on January 16, 2025. After a further extension, Plaintiff served responses to PCJV's RFP 1 to 27 on January 21, 2025.

Defendants timely sent meet and confer emails to Plaintiff:

- On January 17, 2025, PCJV sent an email requesting a meeting and objecting to Plaintiff's incomplete and evasive interrogatory response in a "reverse engineering" case where SPAVI does not even own or know the alleged trade secret recipes or ingredient allocations; and
- On January 24, 2025, PCJV sent emails objecting to Plaintiff's failure to respond to PCJV's January 17 email and requesting a meeting on Plaintiff's incomplete and evasive RFP responses, wherein SPAVI simply objected to RFP Nos. 1-2, 4, 9-12, 14-20, 22, 24, 26-27, only promised limited productions in response to RFP Nos. 3, 6-8, 13 and 21, denied having documents responsive to RFP No. 5 as rewritten by SPAVI to narrow the request, and agreed to produce all non-privilege responsive documents in response to only RFP Nos. 23 and 25.

On January 31, 2025, the parties met and conferred on Plaintiff's responses, reached an impasse on Interrogatory No. 1, but had a productive discussion with regard to RFP Nos. 1 to 27, which Defendants documented on February 4, 2024. Among other things, (a) a distinction was made between responsive documents

1 relating and not relating to the United States, (b) Plaintiff agreed to circulate a  
2 proposed productive order “this week,” which was subsequently approved by  
3 Defendants but not filed by Plaintiff; (c) Plaintiff agreed to make an initial  
4 production and would inform Defendants “this week” where it drew the line, and (d)  
5 Defendants agreed to table their request for all responsive documents until after it  
6 reviewed Plaintiff’s initial production. Defendants documented the meeting on  
7 February 4, 2025. Malynn Decl. ¶¶ 11-12, Ex. 9. Unfortunately, Plaintiff’s counsel  
8 back-tracked on his promises on February 6, even objecting to producing U.S.  
9 related documents within Plaintiff’s own initial disclosures. *Id.* ¶¶ 6-7, 13.

10 On February 13, in a point-by-point response, Defendants inquired whether  
11 Plaintiff was standing upon its objections. *Id.*, Ex. 10. On February 14, Plaintiff  
12 confirmed the discoverability of documents responsive to RFP Nos. 1 to 27 by  
13 making Rule 26 disclosures broadly covering them. Malynn Decl, Ex. 4. After  
14 Plaintiff did not respond to the February 13 email or confer further on PCJV’s RFP  
15 Nos. 1 to 27, PCJV sought and was granted relief—but to no avail.

### 16 **III. SANCTIONS UNDER RULE 37(B) ARE NEEDED AND WARRANTED**

17 Broad sanctions are authorized against a party for failure to obey a court order  
18 compelling discovery. Fed. R. Civ. Proc. 37(b)(2); *United States ex rel. Wiltec*  
19 *Guam, Inc. v. Kahaluu Const. Co., Inc.*, 857 F2d 600, 602 (9th Cir. 1988). Even a  
20 negligent failure to produce relevant discovery may be punished. *Lew v. Kona*  
21 *Hosp.*, 754 F2d 1420, 1426 (9th Cir. 1985); *Marquis v. Chrysler Corp.*, 577 F.2d  
22 624, 642 (9th Cir.1978). The Court may issue the following orders it finds “just”  
23 under the circumstances:

- 24 (i) directing that the matters embraced in the order or other designated  
25 facts be taken as established for purposes of the action, as the  
26 prevailing party claims;  
27  
28

- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Fed. R. Civ. Proc. 37(b)(2)(A).

Striking or dismissing a claim is warranted when disobedience is willful or in bad faith. All that is required to demonstrate “willfulness” or “bad faith” is “disobedient conduct *not shown to be outside the control of the litigant.*” *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 948 (9th Cir. 1993) (finding delay and failure to appear resulting from “misunderstandings” are not outside party’s control) (emphasis added); *Consumer Fin’l Protection Bureau v. Morgan Drexen, Inc.*, 101 F.Supp.3d 856, 868 (CD Cal. 2015) (discussing standard).

Alternatively, the Court may issue an order prohibiting the disobedient party from supporting claims or opposing defenses, or from introducing documents into evidence. Fed. R. Civ. Proc. 37(b)(2)(A)(ii); *Von Brimer v. Whirlpool Corp.*, 536 F.2d 838, 844 (9th Cir. 1976). Such an order is warranted to preclude the belated production of documents. *Dale K. Barker Co., P.C. v. Valley Plaza*, 541 Fed. Appx. 810, 816 (10th Cir. 2013) (affirming sanction prohibiting the use of documents not produced during discovery in support of case-in-chief); *Sentry Ins. A Mut. Co. v. Brand Mgmt., Inc.*, 295 FRD 1, 5 (E.D.N.Y. 2013) (preclusion order).

When documents are suppressed to avoid undermining a party’s case-in-chief or to stymie cross-examination, issue sanctions are an appropriate remedy. The court may order the matters at issue or any designated facts “established” for purposes of



1 the action. Fed. R. Civ. Proc. 37(b)(2)(A)(i); *Insurance Corp. of Ireland, Ltd. v.*  
2 *Compagnie des Bauxites de Guinee*, 456 US 694, 695 (1982). An adverse inference  
3 instruction may issue when the disobedience was merely negligent, rather than  
4 intentional. *Residential Funding Corp. v. DeGeorge Fin'l Corp.*, 306 F.3d 99, 107  
5 (2d Cir. 2002); *Flagg v. City of Detroit*, 715 F3d 165, 178 (6th Cir. 2013). Similar, a  
6 jury may be informed of the discovery violation. *Network Computing Services*  
7 *Corp. v. Cisco Systems, Inc.*, 223 FRD 392, 399 (D S.C. 2004).

8 In addition to the orders above, “the court must order the disobedient party,  
9 the attorney advising that party, or both to pay the reasonable expenses, including  
10 attorney's fees, caused by the failure, unless the failure was substantially justified or  
11 other circumstances make an award of expenses unjust.” Fed. R. Civ. Proc.  
12 37(b)(2)(C). Rehashing arguments or lack of willfulness/bad faith is not substantial  
13 justification. *Hyde & Drath v. Baker*, 24 F3d 1162, 1171 (9th Cir. 1994).

14 **A. Plaintiff’s Disobedience is Willful**

15 Plaintiff’s alleged ownership of the Potato Corner brand arises from a  
16 transaction with Cinco that occurred in the middle of litigation Cinco filed against  
17 Koren as its joint venture partner when Cinco was enjoined by the state court as  
18 Koren’s joint venture partner. Among other things, including product specimens,  
19 PCJV propounded RFP Nos. 1 to 27 to discover, as phrased by Plaintiff’s own Rule  
20 26 disclosures, all “[d]ocuments relating to intellectual property comprising the  
21 Potato Corner brand,... including documents showing SPAVI’s ownership of the  
22 Potato Corner brand..., documents evidencing SPAVI’s trade secrets included  
23 within the Potato Corner Intellectual Property, protectability of any of the Potato  
24 Corner Intellectual Property (including the maintenance of secrecy of any  
25 confidential, proprietary, and/or trade secret information),....”

26 A party that refuses to produce responsive documents falling within its own  
27 initial disclosures is intentionally suppressing evidence. It is willful disobedience,  
28 *i.e.*, conduct not shown to be outside the control of the litigant, when that party then

1 violates a court order to produce those documents by a date certain (April 11, 2025),  
2 including to begin a rolling production weeks earlier (by no later than March 24) of  
3 the documents it had already gathered so as to enable the receiving party to  
4 comment upon and supplement custodian of records and search terms in advance of  
5 a hearing (April 4), so as to ensure complete production of all compelled responsive  
6 documents by the date certain (April 11).

7 In violation of the March 12 Order, Plaintiff did not produce any documents  
8 the week of March 24, 2025. Plaintiff did not produce any documents prior to the  
9 hearing on April 4, 2025. Plaintiff did not produce any documents by the April 11,  
10 2025 deadline either. Plaintiff still has not produced a list of search terms or record  
11 custodians, let alone the ordered means to evaluate the same. Plaintiff thumbed its  
12 nose at the Order's directive to file a protective order by March 14 and serve an  
13 interrogatory response by March 21. This was purposeful.<sup>7</sup>

14 Plaintiff did not seek relief from the March 12 Order. Plaintiff simply violated  
15 the Order. The reasons Plaintiff told Defendants before the April 4 hearing were  
16 control and cost savings. Plaintiff only wanted to conduct one additional document  
17 search and wanted to conduct it before Defendants were able to review documents  
18 already gathered and then comment on custodian of records and search terms. No  
19 explanation was provided for Plaintiff's refusal to produce documents already  
20 gathered—other than Plaintiff's refusal to file the already approved protective order  
21 as ordered. No explanation was provided for Plaintiff's refusal to use the subject  
22 matter of each RFP as search terms. Malynn Decl. ¶ 17, Exs. 11-12.

23 At the April 4 hearing, Plaintiff's experienced counsel stated for the first time  
24 that the gathering and production of documents relating to one transaction—  
25 evidence of which Plaintiff has known since it announced the transaction during the  
26

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27 <sup>7</sup> Plaintiff was trying to delay and to "create" prejudice so that Defendants would  
28 agree to extend the case management order deadlines after Plaintiff rejected doing  
so for months (indeed, three full months before discovery cut-off).

1 state court litigation would have to be gathered and produced in the federal action  
2 —was somehow more cumbersome than anticipated. This explanation is belied by  
3 the fact that, not only has Plaintiff had months if not years to gather these relevant  
4 documents, Plaintiff failed to produce *any* documents by March 24, as ordered, by  
5 the April 4 hearing, and by April 11 deadline. Malynn Decl. ¶¶ 16, 22.

6 **B. Plaintiff's Disobedience is Unduly Prejudicial**

7 Defendants need and cannot delay the trial against SPAVI. As a result of  
8 SPAVI's interference with PCJV and Koren's contractual rights with Cinco and  
9 Cinco's fiduciary obligations as one of PCJV's joint venture partners when an  
10 injunction enforcing the Written Agreements was pending, Defendants have  
11 temporarily lost the right to use the Potato Corner brand and Plaintiff is willfully  
12 interfering with PCJV's relationships, attempting to co-opt them for itself. Because  
13 PCJV is enjoined until trial from using the Potato Corner brand, most of PCJV's  
14 franchisees claimed to have left PCJV and joined SPAVI's organization, thus  
15 gutting PCJV's revenue and enterprise value. In other words, not only has SPAVI  
16 failed to provide discovery to enable PCJV to adequately defend itself, SPAVI has  
17 used the status quo *it* created to declare business warfare against PCJV.

18 Defendants needed the requested and compelled documents, including the  
19 documents within Plaintiff's initial disclosures, during discovery not after the cut-  
20 off. Defendants should not have to negotiate with a party who has intentionally  
21 suppressed evidence in violation of a court order over the documents Plaintiff  
22 should have produced without a court order.

23 It is no remedy to continue the trial against SPAVI. It is no remedy to obtain  
24 documents at this point, *i.e.*, after April 11, 2025. That is not due process. That is  
25 not how the truth is discovered. Plaintiff filed this case on May 31, 2024; it then  
26 obtained a preliminary injunction order without discovery. It has refused to produce  
27 documents and has violated a court order for litigation advantage after receiving a  
28 preliminary injunction. It should have supported the District Court's rulings by

1 timely producing the documents falling within its Rule 26 disclosure and by  
2 complying with the March 12 Order compelling documents.

3 The litigation advantage Plaintiff has obtained by suppressing evidence  
4 during discovery is not and cannot be remedied by the belated, selective production  
5 of documents over which the Court and Defendants should not have to spend  
6 resources and concern themselves at this point. Plaintiff knew the consequences of  
7 violating a court order by willful disobedience. It is spelled out in Rule 37.

8 **C. Sanctions Are Appropriate**

9 As an initial matter, Plaintiff should be held in contempt. Additionally, PCJV  
10 seeks the following remedies for the following reasons:

11 **1. Order Striking or Dismissing Plaintiff's Claims for**  
12 **Misappropriation of Trade Secrets**

13 Because Plaintiff has not produced a single document in support of its claims  
14 for misappropriation of trade secrets during discovery, an order striking its claims or  
15 dismissing them with prejudice is appropriate. Plaintiff has not produced documents  
16 in support of its case-in-chief: (1) that it owns any trade secret or confidential  
17 recipes or ingredient allocations, let alone provided them to Defendants; (2) that the  
18 labeling and contents of flavored seasonings packages "reversed engineered" by  
19 Defendants were not publicly sold and available on the open market; (3) that  
20 reasonable steps since 2009 have been taken to maintain the alleged secrecy of the  
21 labeling and contents of the seasoning packages; and (4) that SPAVI has been  
22 damaged as a result of competition mimicking the flavors seasonings. There is no  
23 justification for a lesser sanction. Plaintiff has intentionally suppressed evidence  
24 falling squarely within its Rule 26 disclosures and has willfully violated a court  
25 order requiring the production of this evidence by April 11, 2025.<sup>8</sup>

26  
27 <sup>8</sup> SPAVI's belated interrogatory response does not fare any better. Ignoring the  
28 Magistrate Judge's guidance at the March 12 hearing, it fails to reasonably identify  
the claimed trade secrets and creates even more uncertainty, rather than lessen it.

1                   **2. Order Prohibiting Plaintiff from Introducing at Trial Any**  
2                   **Documents Not Produced by April 11, 2025**

3           Because Plaintiff has not produced a single document evidencing its  
4 acquisition of the Potato Corner trademarks, including Plaintiff's evaluation of the  
5 business opportunity and litigation risks, let alone any other due diligence during  
6 discovery, an order prohibiting Plaintiff from introducing documents not produced  
7 in discovery is necessary and appropriate. Indeed, it is a common remedy to avoid  
8 unfair prejudice at trial from the belated, selective production of documents after the  
9 close of discovery. *See Dale K. Barker Co., P.C.*, 541 Fed. Appx. at 816 (affirming  
10 sanction prohibiting the use of documents not produced during discovery in support  
11 of case-in-chief).

12                   **3. Order Deeming Matters at Issue and Designated Facts**  
13                   **Established**

14           Plaintiff's suppression of evidence and willful violation of a court order was  
15 designed to prevent Defendants from overcoming the preliminary injunction at trial  
16 through the cross-examination of Plaintiff's case-in-chief. Plaintiff plainly stated at  
17 the March 12 hearing that it wanted the assignment of trademark registrations as the  
18 only evidence of Plaintiff's acquisition of the trademarks in the middle of litigation  
19 when Cinco and SPAVI were enjoined from interfering with PCJV and Koren's use  
20 and control of the U.S. trademarks and communicating with U.S. franchises any  
21 claim to superior trademark rights. Issue sanctions are warranted because an order  
22 prohibiting Plaintiff from introducing into evidence documents it has suppressed  
23 does not remedy the suppression and violation of the court order.

24           Rather, issue sanctions are the appropriate remedy for suppressing evidence  
25 in discovery in violation of a court order. Fed. R. Civ. Proc. 37(b)(2)(A)(i);  
26 *Insurance Corp. of Ireland, Ltd.*, 456 US at 695. The Court should deem as  
27 established the facts embraced by RFP Nos. 1 to 21 set forth in the notice and  
28 detailed above. A lesser sanction such as an adverse inference is not warranted

1 because Plaintiff's suppression of evidence was intentional, not negligent. *Cf.*  
2 *Residential Funding Corp.*, 306 F.3d at 107; *Flagg*, 715 F3d at 178.

3 **4. Order Awarding Attorneys' Fees Against Plaintiff and its**  
4 **Counsel**

5 Rule 37(b)(2)(C) requires an award of reasonable attorney's fees caused by  
6 the violation of a court order, where, as here, there is no substantial justification or  
7 other circumstance making just the suppression of evidence falling within Rule 26  
8 disclosures in violation of a court order. Plaintiff and its counsel cannot justify the  
9 suppression of evidence by its refusal to file an approved protective order. Plaintiff  
10 and its counsel cannot justify their violation of a court order by rehashing arguments  
11 or claiming a lack of willfulness or bad faith. *Hyde & Drath*, 24 F3d at 1171.

12 Put simply, Plaintiff's and its counsel's refusal to produce documents during  
13 discovery in violation of a court order lacks justification. Accordingly, Defendant  
14 are entitled and requests reasonable attorney's fees in the amount of no less than  
15 \$85,370 as supported in the Malynn Decl. (at ¶ 23) for Plaintiff's failure to comply  
16 with the March 12, 2024 Order.

17 **5. For Such Further Appropriate Relief, Including a Finding of**  
18 **Contempt**

19 In addition to the foregoing, PCJV requests such other reasonable or  
20 appropriate relief the Court deems necessary, such as a finding of contempt for  
21 Plaintiff's willful violation of the March 12 Order. Defendants should have an even  
22 playing field at trial.

23 **IV. CONCLUSION**

24 For the foregoing reasons, the motion should be granted.  
25  
26  
27  
28



1 DATED: April 14, 2025

**BLANK ROME LLP**

2  
3 By: /s/ Arash Beral

Arash Beral

Todd Malynn

4 Attorneys for Defendants, Counterclaimants,  
5 and Third Party Plaintiffs PCJV USA, LLC,  
6 PCI TRADING LLC, POTATO CORNER,  
7 LA GROUP, LLC, GK CAPITAL GROUP,  
8 LLC, NKM CAPITAL GROUP, LLC and  
9 GUY KOREN, and Defendants J & K  
AMERICANA, LLC, J&K LAKEWOOD,  
10 LLC, J&K OAKRIDGE, LLC, J&K  
11 VALLEY FAIR, LLC, J & K ONTARIO,  
12 LLC, J&K PC TRUCKS, LLC, HLK  
13 MILPITAS, LLC, and GK CERRITOS, LLC  
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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel of record for Defendants certifies that this brief contains 6,558 words, which complies with the word limit of Local Rule 11-6.1.

DATED: April 14, 2025

/s/ Arash Beral

Arash Beral